IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 15285 of 2007(T)

PETITIONER:

REGI JOSE, S/O.A.T.JOSE,
AGED 36, RESIDING AT ALAPPATT KUNNEL HOUSE,
PALA, KOTTAYAM DISTRICT.

BY ADV. SRI.K.T.SHYAMKUMAR
SRI.HARISH R. MENON

RESPONDENTS:

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1. THE MUNICIPAL CHAIRPERSON,
MUNICIPAL COUNCIL, PALA.

2. THE MUNICIPAL SECRETARY,
PALA MUNICIPALITY, PALA.

3. TOMY EAPEN, S/O.EAPEN,
RESIDING AT ANCHERI HOUSE, KIZHATHADIYOOR KARA,
MEENACHIL TALUK, PALA.

BY ADV. SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	TRUE COPY OF THE LICENCE ISSUED BY R2 TO THE PETITIONER FOR THE YEAR 2006-07 DTD. 11-07-2006
EXT.P2	TRUE COPY OF THE LICENCE RENEWAL APPLICATION SUBMITTED BY THE PETITIONER BEFORE R2 DTD. 15-02-207
EXT.P3	TRUE COPY OF THE ORDER PASSED BY R2 DTD. 20-02-2007
EXT.P4	TRUE COPY OF THE APPEAL ALONG WITH THE STAY PETITION FILED BY THE PETITIONER BEFORE R1 DTD. 02-03-2007
EXT.P5	TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES BOOK MAINTAINED IN THE OFFICE OF R1

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(C).No. 15285 OF 2007

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Dated this the 8th day of August, 2007

JUDGMENT

Petitioner challenges Exts.P3 and P5. Petitioner seeks a direction to the first respondent to dispose of Ext.P4 appeal afresh after hearing the petitioner. He seeks a further direction to the second respondent to renew the licence granted to the petitioner for conducting an ice-cream parlour.

Case of the petitioner in brief is as follows:

Petitioner is conducting an ice-cream parlour in Shop room No. 52 of Ward VIII of Pala Municipality. There is a rent agreement between him and the third respondent who is the landlord. Petitioner applied for licence to conduct an ice-cream parlour for the year 2006-07. The consent of the third respondent was produced along with original applications by the petitioner before the second respondent, it is stated. It was after considering the documents produced along with the original application, the second respondent issued licence to the

petitioner for conducting an ice-cream parlour for the year 2006-07. On 15/02/2007 the petitioner applied for renewal of the licence for continuing the very same business in the above said shop room. But the second respond without applying its mind and without comprehending the law on the aspect refused to renew the licence by stating that the consent letter of the third respondent-landlord is necessary. Petitioner preferred an appeal and he also filed a stay petition. Petitioner was under the bonafide belief that he will be heard before the appeal is considered. But it is rejected by Ext.P5 order without hearing the petitioner.

2. Learned counsel for respondents 1 and 2 does not dispute the fact that the appeal was disposed of without hearing the petitioner. Learned counsel for the petitioner points out that the matter is squarely covered by the decision reported in **Marimithu v. Director General of Police** (1999(3)KLT 662). He would submit that while granting licence for the first time, matter attracts Section 492(3) requiring the written consent of the landlord which is unnecessary for renewal as it is clear from provisions of Sub section 4 of Section 492 of the Municipalities Act.

As the petitioner was not heard in the matter, Ext.P5 is quashed. The council of the second respondent-Municipality will consider Ext.P4 appeal with opportunity of hearing to the petitioner and the third respondent and take a decision in accordance with law within a period of one month from the date of receipt of a copy of this judgment. The Council will take note of the decision in 1999(3)KLT 662 and also bear in mind the provisions contained in Sub section 3 as also sub section 4 of Section 492.

(K.M.JOSEPH, JUDGE)

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